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SUBJECT: EU, CHINESE AND ARMENIAN NEGOTIATIONS HIGHLIGHT DECEMBER 2009 GOVERNMENT PROCUREMENT SESSIONS

Ref: A) Geneva 973 B) State 124680

¶1. (SBU) SUMMARY: Parties to the WTO Agreement on Government Procurement (GPA) expressed renewed interest during meetings December 7-9 in Geneva in concluding renegotiation of the GPA in ¶2010. In bilateral negotiations with the EU delegation, the United States and the EU agreed to work jointly to try to resolve the outstanding issues, both text and market access related, beginning at the next GPA meeting in February, with the goal of completing the renegotiation before the end of 2010. On accessions, Armenia's delegation responded favorably to U.S. requests for modifications of its initial offer and appears that it may be possible to conclude its accession by mid-2010. After little progress on its accession in 2009, Jordan promised to submit a revised market access offer during the first half of 2010. During a bilateral meeting with China, the U.S. delegation raised industry complaints on the issuance of a recent circular on indigenous innovation, which appears to place foreign firms at a significant disadvantage relative to Chinese domestic firms when competing for certain types of government procurement. The circular appears inconsistent with China's commitment made during the July Strategic and Economic Dialogue that it would treat products produced in China by foreign invested firms the same as products produced in China by Chinese firms for purposes of government procurement. The U.S. delegation held bilateral meetings December 7-8 with Armenia, China, Jordan, the EU, Japan, Singapore, Switzerland and Norway. The WTO Committee on Government Procurement formal meeting took place December 9. The next committee meetings will take place the week of February 8, ¶2010. End summary.

PRODUCTIVE MEETING WITH EU BOOTS HOPE FOR REVISED GPA IN 2010

¶2. (SBU) A bilateral meeting with the EU focused on identifying common interests in moving forward in GPA negotiations. While the EU did not provide specific new offers, they indicated they had a mandate, and wanted to work with the United States, to conclude the renegotiation of the GPA in 2010. Both sides went over a list of text and market access issues that would need to be resolved or addressed in order to reach an agreement.

¶3. (SBU) The EU presented a wish list for expanded market access to the U.S. procurement market. The U.S. delegation made no commitments, but indicated it would consider potential expansion of U.S. coverage'. The U.S. delegation reiterated that the EU's revised market access offer is unacceptable as it withdraws current

market access coverage and could not accept any agreement with such an outcome. The EU did not respond to the comment. The United States emphasized the need to resolve the failure of the EU to properly notify more than 500 modifications to its covered entity list. Finally, the United States would need to see what increased coverage the EU could offer. The two sides also discussed ways to work together on other GPA issues.

ADDITIONAL BILATERAL MEETINGS WITH GPA MEMBERS

¶4. (SBU) JAPAN: In a bilateral meeting, Japan's delegation said it would try to find ways to make offers of additional market access by February. Japan indicated it had "informal information" on implementation of the American Recovery and Reinvestment Act to exclude Japanese firms in contravention of the GPA. The U.S. delegation expressed its willingness to engage, but noted that it could not respond substantively absent information regarding the entities involved.

¶5. (SBU) SINGAPORE: Singapore offered to drop its proposed revisions to Article XXII (Final Provisions), which have been delaying completion of that Article. [Note: However, in the plurilateral session the EU requested to retain Singapore's proposal as an EU proposal and promised to circulate to the Committee amended language at the February meeting. End note.] Singapore also offered to amend a small business set-aside program it put forward in its revised market access offer in July, and which had met significant amount of resistance from the United States and most other GPA parties. Singapore is offering to open these small business set-aside procurements to all GPA members. The United States will examine this amended offer before formally replying.

GENEVA 00001262 002.2 OF 003

¶6. (SBU) NORWAY: The Norwegians said they fully shared the view to move forward quickly on completing the revision, and said success could give a positive signal to Doha negotiators. They said they would need to consult in Oslo on concluding the renegotiations as an amendment to the existing GPA, as they had originally understood efforts as creating a new agreement.

¶7. (SBU) SWITZERLAND: The Swiss negotiator supported aggressive efforts to conclude negotiations on the revised GPA during the first half of 2010. He proposed putting matters that could not be resolved in 2010 into a work program for future discussions. For Switzerland, providing for non-discriminatory treatment of small- and medium-enterprises is vital. The Swiss would appreciate U.S. support for such a statement, and would be interested in access to even one more U.S. state.

ARMENIAN ACCESSION MOVING QUICKLY

¶8. (SBU) Armenia sent a delegation from Yerevan as requested by GPA members at the previous session (ref A). The delegation presented a timetable that would put Yerevan on course for accession as soon as July 2010. Armenian delegation leader Varos Simonyan, Head of the EU and International Economic Affairs in the Ministry of Economics, came prepared with oral answers to all questions submitted by the United States after the October bilateral. He agreed to remove Armenia's note that would reserve the right to apply offsets on procurement contracts, as well as to leave out a note potentially limiting coverage of some services. Simonyan reported that a draft law on government procurement to comply with the GPA was under discussion within the government and would be sent to parliament by February. At the Government Procurement Committee Session it was agreed that all parties should submit requests to Armenia no later than the next meeting in February to avoid further delay.

CHINESE DELEGATION ON INDIGENOUS INNOVATION, NEXT OFFER

¶9. (SBU) The U.S. delegation used a bilateral meeting with the Chinese to discuss new regulations on indigenous innovation with their Chinese counterparts, raising the same points included in a demarche recently presented by Embassy Beijing (ref B). The Ministry of Finance-led Chinese delegation, which included members from the Ministry of Commerce and the Legal Office of the State

Council, claimed that it had fewer details on the circular than the U.S. delegation. The Chinese explained that although the Ministry of Finance (MOF) was one of three agencies issuing the circular on indigenous innovation, the Ministry of Science and Technology was the lead. The head MOF official present did not refute U.S. concerns that the process could de facto bar foreign-owned manufacturers in China from some procurement. He said he would look into the circular. [Comment: the United States raised its concerns with this measure with the other key GPA parties. Somewhat surprisingly, most other delegations did not seem to be familiar with it or appreciate how it could affect procurement market opportunities.] In response to a U.S. question, he noted that MOF was working on revisions of its implementing regulations for the Government Procurement Law, and thought they could be submitted soon to the State Council.

JORDAN EXPECTS TO SUBMIT REVISED ACCESSION OFFER IN APRIL

¶10. (SBU) The Jordanian delegation, led by their capital-based negotiator, explained in another bilateral meeting that Amman hopes to finish an assessment of the impact of GPA accession, being conducted by a private consultant, in the first quarter of 2010. It will use the assessment to formulate a revised accession offer in April, in which it indicated it would respond to U.S. requests from August to improve its offer. Jordan also expressed interest in attending any informational session on the GPA held in its region. Jordanian businesses would benefit from learning about possibilities to compete for USG procurement, according to the delegation.

FORMAL MEETING

¶11. (U) At the formal meeting of the Committee, the Committee reviewed the status of accessions and implementation of the GPA with

GENEVA 00001262 003 OF 003

respect to notifications of thresholds, statistical reporting and review of national implementing legislation. It also reviewed the status of modifications to the appendices to the GPA. Both Japan and the U.S. delegation noted concerns with long-standing unresolved objections to modifications, and asked the Chair's assistance in resolving.

U.S. DELEGATION

¶12. (U) The United States delegation was led by Jean Heilman Grier, USTR senior procurement negotiator, and included Robert Kasper from USTR/Geneva, Katrice Kelly and Brian Woodward of the Department of Commerce, and Nathan Lane of the Department of State. This cable has been cleared by all members of the delegation.

SHARK